

May 3, 1950

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ARIZONA ATTORNEY GENERAL

Wilson  
Hubert O. Merryweather  
Senator, Santa Cruz County  
Arizona State Legislature  
Nogales, Arizona

Dear Sir:

You have orally requested our opinion on some questions relating to the Commissioner of Immigration for Santa Cruz County and the expenditure of the funds relating thereto. Your questions as we understand them are:

1. Can the Chamber of Commerce, an Arizona corporation, be appointed Commissioner of Immigration?
2. Can an officer of the Chamber of Commerce be appointed Commissioner of Immigration?
3. Are the expenditures by and for a Commissioner of Immigration for a county of the fourth class limited to \$600.00 per year.

The present statute which provides for a Commissioner of Immigration reads:

Immigration commissioner--Appointment, salary, duties.-- The board may appoint a county commissioner of immigration, to hold office for two (2) years and to receive an annual salary not exceeding six hundred dollars (\$600). The commissioner shall give information requested by persons desiring to immigrate to his county, or make investments therein; correspond with immigration bureaus, chambers of commerce, tourist bureaus, or other commercial bodies, and give data for the guidance of prospective immigrants, or tourists; give reliable information regarding localities in the county where the settler, or tourist, may choose a home or make investments; issue maps and pamphlets on the resources of the county; promote tourist travel, or the investment of capital, and distribute such documents to insure their most

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useful circulation. The commissioner may hire necessary clerks, prescribe their duties and fix their compensation. Such expenditures shall be first authorized by the board when approving the annual budget.

Counties of the first class may expend a further sum not to exceed twenty-five thousand dollars (\$25,000) annually, in the furtherance of such objects. Counties of the second class may expend a sum not in excess of ten thousand dollars (\$10,000) and counties of the third class may expend a sum not exceeding five thousand dollars (\$5,000) for such purposes." Section 17-356, ACA 1939 (Laws 1929, Chapter 54, Section 1).

It should be pointed out that this section will be amended by Chapter 25, Section 1, Laws of 1950, First Special Session when such act becomes operative on June 18, 1950. However, this latter amendment contains no changes which are material to your questions, so it will not be considered in our discussion herein.

The Arizona Supreme Court has stated that a position is a public office if it satisfies certain criteria, which it sets out as follows:

" It will be seen from this that we held there were three elements requisite to a position being a public office, which are (a) the specific position must be created by law; (b) there must be certain definite duties imposed by law on the incumbent; and (c) they must involve the exercise of some portion of the sovereign power..."  
Industrial Commission v. Arizona State Highway Commission, 61 Ariz. 59, 145 P. 2d 846, and Stapleton v. Frohmiller, 53 Ariz. 11, 85 P. 2d 49.

Our supreme court has taken the view that duties which involve the public trust and welfare are duties which involve the exercise of some portion of the sovereign power. McCarthy vs. State, 55 Ariz. 328, 101 P. 2d 449. It would seem that duties imposed upon the Commissioner of Immigration do vitally concern the public trust and welfare and therefore involve the exercise of some portion of sovereign power.

From the foregoing it will be seen that a Commissioner of Immigration is a position which is granted by law; certain definite duties are imposed by law upon the incumbent; these duties involve the exercise of some portion of the sovereign power.

The Arizona Constitution requires that every public officer must be a qualified elector of the political division or any municipality in which he is elected or appointed. Article 7, Section 15, Arizona Constitution. It is clear that a corporation cannot be a qualified elector within the meaning of such provision. Arizona Constitution, Article 7, Section 2; 13 Am. Jur. 167, Section 12. This is further borne out by the statutory definition of eligibility requirements of a public officer found in Sections 12-102 and 12-103, ACA 1939 (R.C. 1928, Sections 54 and 55). It is therefore our opinion that the Chamber of Commerce cannot be appointed Commissioner of Immigration.

As pointed out above, there are certain qualifications which must be met by a person in order for him to be appointed Commissioner of Immigration. We are unable to find any such qualifications which necessarily preclude from such office a person who is also an officer or employee of the Chamber of Commerce. It is therefore our opinion that an officer of the Chamber of Commerce, if he meets the qualifications prescribed for the Commissioner of Immigration in our Constitution and statutes, can be appointed to the latter office.

Prior to the 1929 amendment, the section providing for Commissioner of Immigration read:

"Immigration commissioner; duties.

The board may appoint a county commissioner of immigration, to hold office for the term of two years and to receive a salary not to exceed six hundred dollars per annum. Said commissioner shall at all times give such information as may be sought by persons desiring to immigrate to the said county or to make investment therein; open correspondence with immigration bureaus and give advice and data for guidance of the prospective immigrant as may be most conducive to his welfare and the advancement of the county; give reliable and trustworthy information in regard to localities in the county where the settler may desire to choose a home, and every possible assistance after his

arrival; issue from time to time maps and pamphlets, on the resources of the county as may induce immigration and the investment of capital, and distribute such documents without the state in such manner as will insure the widest and most useful circulation, and be at all times prepared to give such facts and statistics regarding the county as may be desired. Counties having an assessed valuation of six million dollars or more, may expend a further sum not exceeding twenty-five hundred dollars per annum in the furtherance of such objects, and counties of the first class, a sum not exceeding twelve thousand dollars per annum." Section 821, Revised Code of 1928.

It can be seen that prior to the 1929 amendment there was no specific provision for compensation of necessary clerks, so that only the counties authorized to expend further sums could compensate such employees. The 1929 amendment, however, added a provision empowering the Commissioner to hire necessary clerks. The first paragraph of Section 17-356, quoted supra, which is the 1929 amendment, sets out the maximum salary for the Commissioner of Immigration and provides for the compensation for necessary clerks, and further provides that such expenditures must first be authorized by the Board of Supervisors when approving the annual budget. The second paragraph of this section provides for expenditures of further sums by first, second and third class counties. In the situation where the Legislature adds something to an existing statute, our court has stated its position as follows:

"We are aware of our duty to give effect to the amendment if possible. 'It will be presumed that the legislature, in adopting the amendment, intended to make some change in the existing law, and therefore the courts will endeavor to give some effect to the amendment.' \* \* \* " Beach v. Superior Court, 64 Ariz. 375, 173 P. 2d 79.

Counties which were entitled to expend further sums under the statute, as it existed in the Revised Code of 1928, could have used such funds for the compensation of necessary clerks.

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Under the rule of construction set out above it is apparent that the Legislature intended to render a change when, by the 1929 amendment, it authorized the hiring of necessary clerks; this change, being an additional specific authorization, must have been intended to authorize such expenditures by all counties. This construction is further borne out by the Legislature's arrangement of sentences and paragraphs. The 1929 amendment separates this section into two paragraphs; the first contains enumerations of powers and duties applicable to all counties alike; the second refers to specifically enumerated classes of counties.

Arizona has repeatedly held that meaning will be given to every portion of a statute whenever possible. State v. Dickens, 66 Ariz. 86, 183 P. 2d 148, and Moore v. Valley Garden Center, 66 Ariz. 209, 185 P. 2d 998. This rule of statutory construction compels us to give some meaning to the term "further sum" which is found in the second paragraph. Webster defines the adjective "further" as:

"Going or lying beyond; additional;  
as, a further reason for this opinion;  
without further delay; further trouble."  
Webster's International Dictionary,  
Unabridged, Second Edition.

The reasonable meaning to be attributed to this term, according to the context of the section as a whole, is "a sum in addition" to the expenditures authorized in the preceding paragraph. It follows that the enumeration of additional authority in the second paragraph is not to limit or negative any of the authority granted in the first paragraph.

It is therefore our opinion that the expenditures by and for a Commissioner of Immigration of a county of the fourth class are not necessarily limited to \$600.00 per year, but that, in addition to the salary of the Commissioner, such county can expend sums for clerks which are actually necessary for these purposes, if such expenditures are first authorized by the board of supervisors in approving the annual budget.

Trusting the foregoing satisfactorily answers your inquires, we are

Very truly yours,

FRED O. WILSON  
Attorney General

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